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11 UNITED SERVICES AUTOMOBILE
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13 INSURANCE COMPANY

14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**

16 JOHN HORLIECA AND DARRYL
17 WARNER, Individually and on
18 Behalf of All Others Similarly
Situated,

19 Plaintiffs,

20 v.

21 UNITED SERVICES
22 AUTOMOBILE ASSOCIATION
23 AND USAA CASUALTY
INSURANCE COMPANY,

24 Defendants.

Case No.: 5:23-cv-00278-KK-SPx

**STIPULATED PROTECTIVE
ORDER**

Judge: Hon. Kenly Kiya Kato
Ctrm: 3
Complaint Filed: February 20, 2023

1 **1. A. PURPOSES AND LIMITATIONS**

2 Discovery in this action is likely to involve production of confidential,
3 proprietary, or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting this litigation may be
5 warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter
6 the following Stipulated Protective Order. The Parties acknowledge that this Order
7 does not confer blanket protections on all disclosures or responses to discovery and
8 that the protection it affords from public disclosure and use extends only to the limited
9 information or items that are entitled to confidential treatment under the applicable
10 legal principles. The Parties further acknowledge, as set forth in Section 12.3, below,
11 that this Stipulated Protective Order does not entitle them to file confidential
12 information under seal; Civil Local Rule 79-5 sets forth the procedures that must be
13 followed and the standards that will be applied when a Party seeks permission from
14 the Court to file material under seal.

15 **B. GOOD CAUSE STATEMENT**

16 This Action is likely to involve trade secrets, customer and pricing lists and
17 other valuable research, development, commercial, financial, technical and/or
18 proprietary information for which special protection from public disclosure and from
19 use for any purpose other than prosecution of this Action is warranted. Such
20 confidential and proprietary materials and information consist of, among other things,
21 confidential business or financial information, information regarding confidential
22 business practices, or other confidential research, development, or commercial
23 information (including information implicating privacy rights of third parties),
24 information otherwise generally unavailable to the public, or which may be privileged
25 or otherwise protected from disclosure under state or federal statutes, court rules, case
26 decisions, or common law. Accordingly, to expedite the flow of information, to
27 facilitate the prompt resolution of disputes over confidentiality of discovery
28 materials, to adequately protect information the Parties are entitled to keep

1 confidential, to ensure that the Parties are permitted reasonable necessary uses of such
2 material in preparation for and in the conduct of trial, to address their handling at the
3 end of the litigation, and serve the ends of justice, a protective order for such
4 information is justified in this matter. It is the intent of the Parties that information
5 will not be designated as confidential for tactical reasons and that nothing be so
6 designated without a good faith belief that it has been maintained in a confidential,
7 non-public manner, and there is good cause why it should not be part of the public
8 record of this case.

9 **2. DEFINITIONS**

10 2.1 Action: This pending federal lawsuit: *Horlieca, et al. v. United Services*
11 *Automobile Association, et al.*, Case No. 5:23-cv-00278-KK-SP.

12 2.2 Challenging Party: A Party or Non-Party that challenges the designation
13 of information or items under this Order.

14 2.3 “CONFIDENTIAL” Information or Items: Information (regardless of
15 how it is generated, stored, or maintained) or tangible things that qualify for
16 protection under Federal Rule of Civil Procedure 26(c) and as specified above in the
17 Good Cause Statement.

18 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
19 their support staff).

20 2.5 Designating Party: A Party or Non-Party that designates information or
21 items that it produces in disclosures or in responses to discovery as
22 “CONFIDENTIAL.”

23 2.6 Disclosure or Discovery Material: All items or information, regardless
24 of the medium or manner in which it is generated, stored, or maintained (including,
25 among other things, testimony, transcripts, and tangible things), that are produced or
26 generated in disclosures or responses to discovery in this Action.

1 2.7 Expert: A person with specialized knowledge or experience in a matter
2 pertinent to the litigation who has been retained by a Party or its counsel to serve as
3 expert witness or as a consultant in this Action.

4 2.8 House Counsel: Attorneys who are employees of a Party to this Action.
5 House Counsel does not include Outside Counsel of Record or any other outside
6 counsel.

7 2.9 Non-Party: Any natural person, partnership, corporation, association, or
8 other legal entity not named as a Party to this Action.

9 2.10 Outside Counsel of Record: Attorneys who are not employees of a Party
10 to this Action but are retained to represent or advise a Party to this Action and have
11 appeared in this Action on behalf of that Party or are affiliated with a law firm which
12 has appeared on behalf of that Party, and includes support staff.

13 2.11 Party: Any party to this Action, including all of its officers, directors,
14 employees, consultants, retained experts, and Outside Counsel of Record (and their
15 support staffs).

16 2.12 Producing Party: A Party or Non-Party that produces Disclosure or
17 Discovery Material in this Action.

18 2.13 Professional Vendors: Persons or entities that provide litigation support
19 services (e.g., photocopying, videotaping, translating, preparing exhibits or
20 demonstrations, and organizing, storing, or retrieving data in any form or medium)
21 and their employees and subcontractors.

22 2.14 Protected Material: Any Disclosure or Discovery Material that is
23 designated as "CONFIDENTIAL."

24 2.15 Receiving Party: A Party that receives Disclosure or Discovery Material
25 from a Producing Party.

26 **3. SCOPE**

27 The protections conferred by this Order cover not only Protected Material (as
28 defined above), but also (1) any information copied or extracted from Protected

1 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material;
2 and (3) any deposition testimony, conversations, or presentations by Parties or their
3 Counsel that might reveal Protected Material, other than during a court hearing or at
4 trial.

5 Any use of Protected Material during a court hearing or at trial shall be
6 governed by the orders of the presiding judge. This Order does not govern the use of
7 Protected Material during a court hearing or at trial.

8 **4. DURATION**

9 Even after final disposition of this litigation, the confidentiality obligations
10 imposed by this Order shall remain in effect until a Designating Party agrees
11 otherwise in writing or a Court order otherwise directs. Final disposition shall be
12 deemed to be the later of (1) dismissal of all claims and defenses in this Action, with
13 or without prejudice; and (2) final judgment herein after the completion and
14 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
15 including the time limits for filing any motions or applications for extension of time
16 pursuant to applicable law.

17 **5. DESIGNATING PROTECTED MATERIAL**

18 **5.1 Exercise of Restraint and Care in Designating Material for Protection.**

19 Each Party or Non-Party that designates information or items for protection under
20 this Order must take care to limit any such designation to specific material that
21 qualifies under the appropriate standards. The Designating Party must designate for
22 protection only those parts of material, documents, items, or oral or written
23 communications that qualify so that other portions of the material, documents, items,
24 or communications for which protection is not warranted are not swept unjustifiably
25 within the ambit of this Order.

26 If it comes to a Designating Party's attention that information or items that it
27 designated for protection do not qualify for protection, that Designating Party must
28 promptly notify all other Parties that it is withdrawing the inapplicable designation.

1 Failure of a Designating Party to withdraw a clearly unjustified designation upon
2 request may expose the Designating Party to sanctions.

3 5.2 Manner and Timing of Designations. Except as otherwise provided in
4 this Order (*see, e.g.*, second paragraph of Section 5.2(a) below), or as otherwise
5 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
6 under this Order must be clearly so designated before the material is disclosed or
7 produced.

8 Designation in conformity with this Order requires:

9 (a) for information in documentary form (*e.g.*, paper or electronic
10 documents, but excluding transcripts of depositions), that the Producing Party affix
11 at a minimum, the legend “CONFIDENTIAL” to each page that contains protected
12 material. If only a portion or portions of the material on a page qualifies for
13 protection, the Producing Party also must clearly identify the protected portion(s)
14 (*e.g.*, by making appropriate markings in the margins) under this Order must be
15 clearly so designated before the material is disclosed or produced.

16 A Party or Non-Party that makes original documents available for inspection
17 need not designate them for protection until after the inspecting Party has indicated
18 which documents it would like copied and produced. During the inspection and
19 before the designation, all of the material made available for inspection shall be
20 deemed “CONFIDENTIAL.” After the inspecting Party has identified the documents
21 it wants copied and produced, the Producing Party must determine which documents,
22 or portions thereof, qualify for protection under this Order. Then, before producing
23 the specified documents, the Producing Party must affix the “CONFIDENTIAL”
24 legend to each page that contains Protected Material. If only a portion or portions of
25 the material on a page qualifies for protection, the Producing Party also must clearly
26 identify the protected portion(s) (*e.g.*, by making appropriate markings in the
27 margins).

1 (b) for testimony given in depositions that the Designating Party
2 identifies on the record, before the close of the deposition as protected testimony.
3 Additionally, any Party or Non-Party may, within 15 days after receiving the
4 transcript of the deposition, designate portions of the transcript, or exhibits thereto,
5 as “CONFIDENTIAL.”

6 (c) for information produced in some form other than documentary and
7 for any other tangible items, that the Producing Party affix in a prominent place on
8 the exterior of the container or containers in which the information is stored the
9 legend “CONFIDENTIAL.” If only a portion or portions of the information warrants
10 protection, the Producing Party, to the extent practicable, shall identify the protected
11 portion(s).

12 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
13 failure to designate qualified information or items does not, standing alone, waive the
14 Designating Party’s right to secure protection under this Order for such material.
15 Upon timely correction of a designation, the Receiving Party must make reasonable
16 efforts to assure that the material is treated in accordance with the provisions of this
17 Order.

18 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

19 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
20 designation of confidentiality at any time that is consistent with the Court’s
21 Scheduling Order.

22 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
23 resolution process under Local Rule 37-1 *et seq.*

24 6.3 Burden. The burden of persuasion in any such challenge proceeding
25 shall be on the Designating Party. Frivolous challenges, and those made for an
26 improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on
27 other parties) may expose the Challenging Party to sanctions. Unless the Designating
28 Party has waived or withdrawn the confidentiality designation, all Parties shall

1 continue to afford the material in question the level of protection to which it is entitled
2 under the Producing Party's designation until the Court rules on the challenge.

3 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

4 7.1 Basic Principles. A Receiving Party may use Protected Material that is
5 disclosed or produced by another Party or by a Non-Party in connection with this
6 Action only for prosecuting, defending, or attempting to settle this Action. Such
7 Protected Material may be disclosed only to the categories of persons and under the
8 conditions described in this Order. When the Action has been terminated, a Receiving
9 Party must comply with the provisions of Section 13 below.

10 Protected Material must be stored and maintained by a Receiving Party at a
11 location and in a secure manner that ensures that access is limited to the persons
12 authorized under this Order.

13 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
14 otherwise ordered by the Court or permitted in writing by the Designating Party, a
15 Receiving Party may disclose any information or item designated
16 "CONFIDENTIAL" only to:

17 (a) the Receiving Party's Outside Counsel of Record in this Action, as
18 well as employees of said Outside Counsel of Record to whom it is reasonably
19 necessary to disclose the information for this Action;

20 (b) the officers, directors, and employees (including House Counsel) of
21 the Receiving Party to whom disclosure is reasonably necessary for this Action;

22 (c) Experts (as defined in this Order) of the Receiving Party to whom
23 disclosure is reasonably necessary for this Action and who have signed the
24 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

25 (d) the Court and its personnel;

26 (e) private court reporters and their staff to whom disclosure is
27 reasonably necessary for this Action and who have signed the "Acknowledgment and
28 Agreement to Be Bound" (Exhibit A);

1 (f) professional jury or trial consultants, mock jurors, and Professional
2 Vendors to whom disclosure is reasonably necessary for this Action and who have
3 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

4 (g) the author or recipient of a document containing the information or
5 a custodian or other person who otherwise possessed or knew the information;

6 (h) during their depositions, witnesses, and attorneys for witnesses, in
7 the Action to whom disclosure is reasonably necessary provided: (1) the deposing
8 party requests that the witness sign the “Acknowledgment and Agreement to Be
9 Bound” (Exhibit A); and (2) they will not be permitted to keep any confidential
10 information unless they sign the “Acknowledgment and Agreement to Be Bound”
11 (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the
12 Court. Pages of transcribed deposition testimony or exhibits to depositions that reveal
13 Protected Material may be separately bound by the court reporter and may not be
14 disclosed to anyone except as permitted under this Protective Order; and

15 (i) any mediator or settlement officer, and their supporting personnel,
16 mutually agreed upon by any of the parties engaged in settlement discussions.

17 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
18 **PRODUCED IN OTHER LITIGATION**

19 If a Party is served with a subpoena or a court order issued in other litigation
20 that compels disclosure of any information or items designated in this Action as
21 “CONFIDENTIAL,” that Party must:

22 (a) promptly notify in writing the Designating Party. Such notification
23 shall include a copy of the subpoena or court order unless prohibited by law;

24 (b) promptly notify in writing the party who caused the subpoena or
25 order to issue in the other litigation that some or all of the material covered by the
26 subpoena or order is subject to this Protective Order. Such notification shall include
27 a copy of this Protective Order; and
28

1 (c) cooperate with respect to all reasonable procedures sought to be
2 pursued by the Designating Party whose Protected Material may be affected.

3 If the Designating Party timely seeks a protective order, the Party served with
4 the subpoena or court order shall not produce any information designated in this
5 action as “CONFIDENTIAL” before a determination by the court from which the
6 subpoena or order issued, unless the Party has obtained the Designating Party’s
7 permission, or unless otherwise required by the law or court order. The Designating
8 Party shall bear the burden and expense of seeking protection in that court of its
9 confidential material and nothing in these provisions should be construed as
10 authorizing or encouraging a Receiving Party in this Action to disobey a lawful
11 directive from another court.

12 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
13 **PRODUCED IN THIS LITIGATION**

14 (a) The terms of this Order are applicable to information produced by a
15 Non-Party in this Action and designated as “CONFIDENTIAL.” Such information
16 produced by Non-Parties in connection with this litigation is protected by the
17 remedies and relief provided by this Order. Nothing in these provisions should be
18 construed as prohibiting a Non-Party from seeking additional protections.

19 (b) In the event that a Party is required, by a valid discovery request, to
20 produce a Non-Party’s confidential information in its possession, and the Party is
21 subject to an agreement with the Non-Party not to produce the Non-Party’s
22 confidential information, then the Party shall:

23 (1) promptly notify in writing the Requesting Party and the Non-
24 Party that some or all of the information requested is subject to a confidentiality
25 agreement with a Non-Party;

26 (2) promptly provide the Non-Party with a copy of the Protective
27 Order in this Action, the relevant discovery request(s), and a reasonably specific
28 description of the information requested; and

1 (3) make the information requested available for inspection by the
2 Non-Party, if requested.

3 (c) If a Non-Party represented by counsel fails to commence the process
4 called for by Local Rules 45-1 and 37-1, *et seq.* within 14 days of receiving the notice
5 and accompanying information or fails contemporaneously to notify the Receiving
6 Party that it has done so, the Receiving Party may produce the Non-Party's
7 confidential information responsive to the discovery request. If an unrepresented
8 Non-Party fails to seek a protective order from this Court within 14 days of receiving
9 the notice and accompanying information, the Receiving Party may produce the Non-
10 Party's confidential information responsive to the discovery request. If the Non-Party
11 timely seeks a protective order, the Receiving Party shall not produce any information
12 in its possession or control that is subject to the confidentiality agreement with the
13 Non-Party before a determination by the Court unless otherwise required by the law
14 or court order. Absent a court order to the contrary, the Non-Party shall bear the
15 burden and expense of seeking protection in this Court of its Protected Material.

16 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

17 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
18 Protected Material to any person or in any circumstance not authorized under this
19 Protective Order, the Receiving Party must immediately (a) notify in writing the
20 Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve
21 all unauthorized copies of the Protected Material, (c) inform the person or persons to
22 whom unauthorized disclosures were made of all the terms of this Order, and
23 (d) request such person or persons to execute the "Acknowledgment and Agreement
24 to Be Bound" (Exhibit A). Unauthorized disclosure by a Receiving Party may expose
25 the Receiving Party to sanctions.
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1 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
2 **PROTECTED MATERIAL**

3 When a Producing Party gives notice to Receiving Parties that certain
4 inadvertently produced material is subject to a claim of privilege or other protection,
5 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
6 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
7 may be established in an e-discovery order that provides for production without prior
8 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
9 Parties reach an agreement on the effect of disclosure of a communication or
10 information covered by the attorney-client privilege or work product protection, the
11 Parties may incorporate their agreement into this Protective Order.

12 **12. MISCELLANEOUS**

13 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
14 person to seek its modification by the Court in the future.

15 12.2 Right to Assert Other Objections. No Party waives any right it otherwise
16 would have to object to disclosing or producing any information or item on any
17 ground not addressed in this Protective Order. Similarly, no Party waives any right
18 to object on any ground to use in evidence of any of the material covered by this
19 Protective Order.

20 12.3 Filing Protected Material. A Party that seeks to file under seal any
21 Protected Material must comply with Civil Local Rule 79-5 and with any pertinent
22 orders of the assigned District Judge and Magistrate Judge. Protected Material may
23 only be filed under seal pursuant to a court order authorizing the sealing of the
24 specific Protected Material at issue. If a Party's request to file Protected Material
25 under seal is denied by the Court, then the Receiving Party may file the information
26 in the public record unless otherwise instructed by the Court.

1 **13. FINAL DISPOSITION**

2 After the final disposition of this Action, as defined in Section 4, within 60
3 days of a written request by the Designating Party, each Receiving Party must return
4 all Protected Material to the Producing Party or destroy such material. As used in this
5 subdivision, “all Protected Material” includes all copies, abstracts, compilations,
6 summaries, and any other format reproducing or capturing any of the Protected
7 Material. Whether the Protected Material is returned or destroyed, the Receiving
8 Party must submit a written certification to the Producing Party (and, if not the same
9 person or entity, to the Designating Party) by the 60-day deadline that (1) identifies
10 (by category, where appropriate) all the Protected Material that was returned or
11 destroyed and (2) affirms that the Receiving Party has not retained any copies,
12 abstracts, compilations, summaries, or any other format reproducing or capturing any
13 of the Protected Material. Notwithstanding this provision, Counsel are entitled to
14 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing
15 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
16 reports, attorney work product, and consultant and expert work product, even if such
17 materials contain Protected Material. Any such archival copies that contain or
18 constitute Protected Material remain subject to this Protective Order as set forth in
19 Section 4.

20 **14. VIOLATIONS**

21 Any violation of this Order may be punished by any and all appropriate
22 measures including, without limitation, contempt proceedings and/or monetary
23 sanctions.
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1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2
3 DATED: November 29, 2023

/s/ Paula M. Ketcham

4 ARENTFOX SCHIFF LLP

5 Paula M. Ketcham

6 One of the Attorneys for Defendants

7 UNITED SERVICES AUTOMOBILE

8 ASSOCIATION and USAA CASUALTY

9 INSURANCE COMPANY

10 DATED: November 29, 2023

/s/ Kevin J. Dolley

11 FRANKLIN D. AZAR & ASSOCIATES, P.C.

12 Kevin J. Dolley

13 One of the Attorneys for Plaintiffs JOHN

14 HORLIECA and DARRYL WARNER and

15 the Proposed Class

ORDER

GOOD CAUSE APPEARING, the Court hereby approves this Stipulated Protective Order. **IT IS SO ORDERED.**

Dated: December 6, 2023

A handwritten signature in black ink, appearing to read 'SP', is written over a horizontal line.

THE HONORABLE SHERI PYM
United States Magistrate Judge

EXHIBIT A**ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND**

I, _____ [print or type full name],
of _____ [print or type full address], declare under
penalty of perjury that I have read in its entirety and understand the Protective Order
that was issued by the United States District Court for the Central District of
California on _____ in the case of *Horlieca, et al. v. United
Services Automobile Association, et al.*, Case No. 5:23-cv-00278-KK-SP. I agree to
comply with and to be bound by all the terms of this Protective Order and I understand
and acknowledge that failure to so comply could expose me to sanctions and
punishment in the nature of contempt. I solemnly promise that I will not disclose in
any manner any information or item that is subject to this Protective Order to any
person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court
for the Central District of California for the purpose of enforcing the terms of this
Protective Order, even if such enforcement proceedings occur after termination of
this action. I hereby appoint _____ [print or type full name]
of _____ [print or type full address and telephone
number] as my California agent for service of process in connection with this action
or any proceedings related to enforcement of this Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____